

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	ICC Docket No. 03-0596
Implementation of the Federal)	
Communications Commission's)	
Triennial Review Order with respect)	
to Local Loops and Dedicated)	
Transport)	

**CERTAIN CLEC's MOTION TO STRIKE PORTIONS OF SBC EXHIBITS. 1.0,
2.0 and 2.1 AND SUPPORTING ATTACHMENTS**

Access One, Inc., CIMCO Communications, Inc., Focal Communications Corporation, Forte Communications, Inc., Globalcom, Inc., MGC Communications, Inc., d/b/a Mpower Communications, Inc., and XO Illinois, Inc., along with the parties listed in paragraph 8 below ("CLECs") hereby move, pursuant to the Administrative Law Judge's ("ALJ") February 11, 2004 Order, to strike certain portions of the Direct and Rebuttal Testimony of SBC Witness Rebecca L. Sparks Concerning High-Capacity Loops and Transport contained in SBC Exhibits 1.0, 2.0, and 2.1 that contain hearsay statements. Additionally, CLECs move to strike certain attachments to her testimony that also present hearsay evidence. In support of this motion, CLECs state as follows:

LIST OF HEARSAY EVIDENCE

SBC has attempted to meet its burden of proof in this case by relying upon studies conducted by third parties. Several witnesses have criticized SBC for relying on third party evidence because such a practice is not consistent with the FCC's Triennial Review

Order. This motion will not restate those arguments regarding the inappropriateness of this evidence and the policy reasons for not relying upon it. Rather, this motion addresses the simple fact that SBC's attempt to inject the findings and opinions of third parties into this proceeding is an attempt to introduce improper hearsay evidence that is contrary to the Rules of Civil Procedure and this Commission's Rules of Practice. The improper evidence SBC is attempting to introduce into the record includes the following:

TRANSPORT

1. SBC has presented as evidence a map showing the location of CLEC transport facilities in the Chicago area (JGS Ex. 1, Attachment 3), discussed at Ex. 1.0, p. 8, lines 154-162 and p. 8, footnote 4. According to footnote 4, the information used to develop this map was obtained from GeoResults and GeoTel.

LOOPS

2. SBC has presented as evidence a list of buildings served by CLECs, compiled by GeoResults, discussed at Ex. 2.0, p. 13, pp. 17-22 and p. 25. Also, Exhibits 2.0 JGS 8, 9 and 12 are spreadsheets based partly on GeoResults data. The portions of those exhibits reporting GeoResults data are hearsay evidence. Finally, Exhibits 2.0 JGS 13-18 are maps based on GeoResults evidence.
3. SBC has presented as evidence of the locations of competitor networks, a study compiled by GeoTel, discussed at Ex. 2.0, p. 7, footnote 3, and pp. 32-

35. Q. 53-58. Also, Ex. 2.0 JGS 4 is a map showing these networks compiled with hearsay evidence.
4. SBC used as a listing of business customers in the Chicago area, information obtained from Dun and Bradstreet, reported at Ex. 2.0 p. 35 Q 59 and 60.
 5. SBC has presented as evidence of the annual telecommunications spending in individual buildings, a study prepared by TNS Telecom, reported at Ex. 2.0, p. 35-38, Questions 61-63 and Question 65. The data is reported on Ex. 2.0, Ex. JGS 20. Exhibits JGS 22 and 23 are TNS publications describing its model.
 6. SBC's conclusions in Exhibit 2, contained at Ex. 2.0, Q 66 and 67 are based on the above hearsay testimony.
 7. If the Commission grants CLECs' request to strike SBC's testimony in its direct case, then the Commission should strike SBC's defense of its use of GeoResults data in its rebuttal testimony, at Ex. 2.1, pp. 15-17.

ARGUMENT

All of the above testimony is hearsay and is not admissible under Section 200.610 of the Commission's rules, which applies the rules of evidence in civil cases in circuit courts to Commission contested proceedings. The only exception provided in the Commission's rules is that evidence otherwise not admissible in civil cases may be admitted "if it is of a type commonly relied on by reasonable prudent persons in the conduct of their affairs." 83 IAC 200.610(b). The Commission's rule is consistent with court decisions finding that hearsay is not admissible in admin. proceedings: (1) *Polk v. Board of Trustees of the Police Pension Fund of the City of Park Ridgem* 253 Ill. App. 3d

525, 624 N.E. 2d 1366 (1st Dist. 1993); (2) *Shapiro v. Regional Board of School Trustees of Cook County*, 116 Ill. App. 3d 397, 451 N.E. 2d 1282 (1st Dist. 1983).

While SBC may argue that reasonable persons would rely upon the sources it cites, in this case, SBC has gone far beyond the limited use of hearsay evidence contemplated by the Commissions Rules of Practice. In the transport portion of this case, SBC has used this evidence to meet its burden on the key issue in the case – the location of alternative networks. In the loops portion of this case, SBC has fabricated an entire structure on hearsay evidence, using it to identify which buildings contain business customers, which of those business customer buildings are served by CLECs, which of those business customer buildings are located near alternative network facilities and how much revenue is associated with each business customer building located near alternative network facilities. Arguably a reasonable person might use bits and pieces of this information for a particular business purpose, but it would *not* be reasonable to use the totality of this evidence in the manner intended by Ms. Sparks' testimony: to meet SBC's burden of proof to show where CLECs are not impaired without access to SBC facilities. This is especially the case in the circumstances herein where SBC seeks a finding of no impairment for numerous enterprise customer locations across the greater Chicago Metro area. Such a significant regulatory decision requires more, not less, respect for handling factual evidence.

This evidence that is the subject of this motion fits squarely within the definition of hearsay evidence. It is created by third parties not testifying in this proceeding and it is being introduced to prove the truth of the matters asserted by those third parties in their studies. CLECs have no opportunity to cross-examine the persons responsible for these

studies. Moreover, these studies have been shown to be inaccurate. SBC has already agreed in its rebuttal testimony that it will not rely solely upon these third party studies when a CLEC presents evidence that it is wrong. SBC's concession, however, that it will not rely on contradicted hearsay evidence does not cure the fundamental problem with this evidence nor make it admissible. Certainly, such a concession would be woefully inadequate in any court of law. Uncontradicted hearsay evidence is still hearsay evidence. No court would allow it to be made a part of the record. The Administrative Law Judge should make the same ruling.

Wherefore, for the reasons stated above, CLECs respectfully move that the Commission strike the following hearsay testimony and exhibits of SBC.

Portions of Exhibits 1.0, 2.0 and 2.1 (see attachments 1-3 to this motion for text to be stricken)

Portions of Exhibits 2.0 JGS 8, 9 and 12 (those locations that would not meet the triggers absent the admission into evidence of the GeoResults study.)

Exhibits 2.0 JGS 4, 13-18, 20, 22 and 23 (in their entirety).

JOINING CLECs.

The following CLECs have indicated prior to filing that they join this motion:

WorldCom d/b/a MCI, Covad Communications Company, McLeodUSA

Telecommunications Services, Inc., TDS Metrocom, LLC, AT&T Communications of Illinois, Inc., TCG Illinois, and TCG Chicago ("AT&T").

Dated: February 19, 2004

Respectfully Submitted,

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ATTACHMENT 1
(Proposed stricken testimony is highlighted)

**BEFORE THE ILLINOIS COMMERCE COMMISSION
OF THE STATE OF ILLINOIS**

Docket No. 03-0596

**Direct Testimony of Rebecca L. Sparks
On Behalf of SBC Illinois
Regarding Dedicated Transport**

**SBC Illinois Exhibit 1.0
PUBLIC**

November 24, 2003

Attachment 3 graphically depicts the extent of fiber transport facilities in Chicago. The red lines represent fiber optic networks deployed by SBC Illinois' competitors. The colored symbols denote SBC Illinois central offices to which competing networks have connected their own transport facilities via "fiber-based collocation" which I describe below. The colored circles denote "carrier hotels" – points outside of SBC Illinois' central offices where competing networks connect with each other, which I describe in more detail below. Clearly, there is already a robust infrastructure in place, with at least 12 competing providers and with competing fiber routes that cover much of the metropolitan area and virtually engulf the downtown Loop.⁴

Q12. Do the transport facilities of competing providers follow the same physical paths as SBC Illinois' network?

A12. No. Competing carriers generally design their own network routes, although there is a certain amount of overlap between their networks and that of SBC Illinois, especially in dense urban areas. As I discussed above, SBC Illinois' interoffice transport network was originally designed to carry traffic between SBC Illinois' central and tandem offices. On the other hand, competing carriers and wholesale providers have developed their own business plans and have deployed their fiber facilities to meet those needs and to serve their customers. In addition, competing carriers determine their own locations for

⁴ SBC obtained the information used to prepare these maps from two independent third parties, GeoResults and GeoTel, which provide information to assist telecommunications carriers and other buyers and sellers of fiber optic equipment and facilities. These companies are described in more detail in my separate testimony on High-Capacity Loops.

ATTACHMENT 2

(Proposed stricken testimony is highlighted. Substitute “94” for “122” throughout)

**BEFORE THE
ILLINOIS COMMERCE COMMISSION**

Docket No. 03-0596

**Direct Testimony of Rebecca L. Sparks
On Behalf of SBC Illinois
Regarding High-Capacity Loops**

**SBC Illinois Exhibit 2.0
PUBLIC**

November 24, 2003

experts in other SWBT departments relating to interconnection/regulatory and legal compliance. I have worked on various aspects of SBC's implementation of the Act, including participating in negotiations and arbitration of interconnection agreements with numerous requesting carriers and managing regulatory activities regarding applications under section 271 by SBC operating companies before the Federal Communications Commission. Effective February 1, 2004, I accepted the position of Executive Director-Industry Markets.

Q4. What is the purpose of your testimony?

A4. The purpose of my testimony is to demonstrate that there is no impairment, and thus no basis for unbundling of high-capacity loops, with respect to the customer locations identified in Attachments 8, 12, and 20. The FCC's *Triennial Review Order* directs state commissions to assess impairment for certain specific customer "locations" served by high-capacity loops of incumbent local exchange carriers like SBC. The FCC's order establishes three alternative methods to show non-impairment: (1) a "self-provisioning trigger" based on existing high-capacity loop facilities that competing carriers use to serve their own end users; (2) a "wholesale trigger" based on existing facilities that competing carriers offer to other carriers; and (3) a "potential deployment" analysis, which considers existing facilities and local engineering factors to determine whether carriers would not be impaired without unbundled access.

In this testimony, I identify the customer locations for which SBC Illinois challenges the FCC's national finding of impairment. I demonstrate non-impairment with respect to DS-3 and dark fiber loops based on the self-provisioning trigger for 122 customer locations, which are listed on Attachment 8. My testimony also demonstrates

non-impairment with respect to DS-1 loops based on the wholesale trigger for those same
122 customer locations, which are listed in Attachment 12. Finally, my testimony shows
that competing carriers are not impaired without unbundled access to DS-3 and dark fiber
loops based on evidence of potential deployment for 749 locations, which are
summarized on Attachment 20. My testimony regarding potential deployment is
supported and supplemented by the testimony of Mr. John Sander, an engineer, who
provides a detailed analysis of the engineering and cost considerations identified by the
FCC. Mr. Sander's testimony is in turn supported by the testimony of Mr. Karl Wardin
regarding certain cost elements.

Q5. How is your testimony organized?

A5. First, in Section I.B, I provide background information about high-capacity loops and
review the development and extent of competitive facilities. Next, I discuss in Section
I.C the pertinent provisions of the FCC's *Triennial Review Order*. I then apply the three
"impairment" analyses set forth in that Order. In Section II, I apply the FCC's "triggers"
for self-provisioned and wholesale loops (which are based on existing competitive
facilities). I then consider the FCC's analysis of potential deployment in Section III.
Overall, I describe the evidence of competitive facilities (both existing and potential) that
I considered and demonstrate that such evidence supports a finding of "non-impairment"
for the locations I identify.

B. Background

Q6. What is a local loop?

134 alone.³ Similar maps, provided by the competing carriers in discovery, show that there
135 are multiple competing networks in the downtown area. Attachment 19.

136
137 **Q12. Please provide some specific examples of competing carriers that have deployed**
138 **fiber loop facilities in Illinois.**

139 **A12.** Many competing carriers, including AT&T and MCI, have provided “lit” fiber loop
140 facilities to serve enterprise building locations. In addition to these more familiar names,
141 many newer providers have emerged. For example, OnFiber Communications Inc.
142 (“OnFiber”) is a carrier that “is strictly focused on addressing the bottleneck in the Metro
143 Core and Metro Access portions of the network”, and it provides “dedicated, diverse fiber
144 links between the Hub and each business. The result is service can be quickly installed
145 and customers can quickly change the service and bandwidth they use.” Attachment 5, at
146 1. To illustrate this graphically, OnFiber’s web site contains maps of its fiber network
147 and a list of its fiber Points Of Presence (“POPs”), which includes eight locations in
148 Chicago. I have included these maps and excerpts from the OnFiber web site as
149 Attachment 5.

150 Another example is Looking Glass Networks, Inc. (“Looking Glass”), which
151 describes itself as “a true facilities-based company” that provides “rapid delivery of
152 SONET/SDH, Ethernet and Wavelength lit services, high–capacity dark fiber and carrier
153 neutral collocation services.” In addition, Looking Glass states, “[w]e have franchise and
154 right-of-way authorization to build networks to connect key aggregation points (e.g.,

³ The information regarding competitive fiber on Attachment 4 was obtained from an independent third

155 carrier hotels, ILEC central offices and enterprise buildings).” Looking Glass states that
156 it has 28 Points of Presence in Chicago, among other locations. The menu of “lit
157 services” includes DS-1, DS-3, OC-n and many higher speed services. I have attached
158 excerpts from Looking Glass’ website as Attachment 6.

159 A third example is AboveNet, which bills itself as the “#1 provider of metro fiber
160 networks” with “more than 950 optically-enabled buildings in 12 U.S. markets” including
161 Chicago. It offers dark fiber and building access services, among others. AboveNet
162 boasts that it “bypasses the copper local loop delivering private fiber connectivity and
163 end-to-end optical performance.” See Attachment 7 for excerpts from the AboveNet
164 website.

165
166 **C. Overview of FCC’s Conclusions**

167 **Q13. How did the FCC define high-capacity loops in its *Triennial Review Order*?**

168 **A13.** The FCC Rule defines the local loop generally as “a transmission facility between a
169 distribution frame (or its equivalent) in an incumbent LEC central office and the loop
170 demarcation point at an end-user customer premises.”⁴ A DS-1 loop is a “digital local
171 loop having a total digital signal speed of 1.544 megabytes per second.”⁵ The definition
172 includes “two-wire and four-wire copper loops capable of providing high-bit rate digital
173 subscriber line services.”⁶ A DS-3 loop is a digital local loop with a “total digital signal

party, GeoTel, which I describe in more detail in Section III of this testimony.

⁴ 47 C.F.R. § 51.319(a).

⁵ *Id.* § 51.319(a)(4).

⁶ *Id.*

(3) state the capacity level of each loop (DS-1, DS-3, or higher). While we have not received complete responses from all of these providers to date, we have nonetheless already received much information concerning the locations at which competing providers have deployed high-capacity loops for their own use and for use by other carriers. Second, SBC Illinois obtained information from an independent third party (GeoResults) regarding the location of competing carriers' fiber equipment, the buildings served by such equipment, the identity of the carrier providing service, and the bandwidth capacity of any identified ring or fiber optic equipment system in the building.

Q30. Who is GeoResults?

A30. GeoResults Inc. is a database marketing and consulting firm.

Q31. What particular types of information does GeoResults provide?

A31. GeoResults provides its clients with national databases of business and residential customers, customized database marketing and mapping services, business and marketing analyses, competitive intelligence reports, and other analytical tools and services. It has developed a national data base with over 80,000 Fiber 'Lit' buildings throughout the U.S. (along with the identity of each service provider that has lit equipment in these buildings) and over 35,000 switching entities along with their building location, the identity of the service provider that owns each switch and the identity of each service provider that is selling services using each switch.

Q32. Who are their clients?

A32. GeoResults provides products and services to incumbent and competing LECs, and to vendors of telecommunications equipment. Their customers include SBC operating companies, Verizon, BellSouth, Qwest, Sprint, American Fiber Systems, Cox Enterprises, Global Crossing, Lucent, RCN, and Time Warner Telecom.

Q33. How do companies within the industry use the information that GeoResults provides?

A33. Telecommunication carriers use the information provided by GeoResults to help make decisions regarding the installation of loops and other facilities in a particular area, to assess the availability of transport networks with which to connect their existing or planned loop facilities, to locate and evaluate potential customers, and to determine markets in which to sell products like excess fiber. Basically, GeoResults brings together the buyers and sellers of telecommunications facilities and services.

Q34. How does GeoResults obtain information on fibered or “lit” buildings?

A34. GeoResults has access to two equipment databases used throughout the industry: a library of equipment Common Language Location Identifier (“CLLI”) codes, maintained by Telecordia, and an inventory of equipment codes in the Central On-line Entry System (“CLONES”) database. When a carrier obtains equipment that will be connected to a public telecommunications network, such as a switch, it must obtain a CLLI code denoting the type and location of equipment. Common Language-based products were initially developed in the 1960s to keep track of all elements in the “Bell System” network and are currently used worldwide and recognized by numerous national and

international telecom standards bodies. These systems were developed by Telcordia (previously known as Bellcore). Telcordia now operates independently of any carrier, and is a pre-eminent creator of technical standards in the telecommunications industry. Today, U.S. telecommunications service providers use Telcordia products to keep track of their network assets and to facilitate interoperability and network and service management for all companies within the industry. Telcordia's CLLI codes and CLONEs databases are maintained for industry access and use. Attachment 10 is an excerpt from Telcordia's website.

Q35. How do these CLLI codes demonstrate the presence of high-capacity loops?

A35. The GeoResults database contains a listing of fiber terminating equipment such as multiplexers. Such equipment is connected to fiber transmission facilities to create DS-1, DS-3 and other circuits over which end users can transmit their voice and data calls. The presence of working equipment of this type at a specific customer location demonstrates that there is also a fiber transmission facility at that location because there is no other use for that equipment.

Q36. How do you know that it is a CLEC transmission facility and not one provided by SBC Illinois?

A36. If an end user or carrier ordered an SBC Illinois high-capacity service, such as DS-1 or DS-3, SBC Illinois would provide its own equipment to terminate the fiber transmission facility to the customer location. Accordingly, there would be no reason for an end user to attach the SBC Illinois service to some other piece of terminating equipment. If, on

the other hand, a carrier ordered an unbundled dark fiber loop to a location, it could attach its own fiber terminating equipment to that dark fiber loop. I have investigated whether any unbundled dark fiber loops have been provided by SBC Illinois in the Chicago area and there are none. From this I conclude that the fiber transmission facility to which the CLEC equipment is attached could not have been provided by SBC Illinois and must have been provided by a competitive carrier.

Q37. What were the results of your review of the information received in discovery and from GeoResults?

A37. I have summarized the results of this review in Attachments 8 and 9. As noted above, Attachment 8 lists the locations where at least two competing providers have deployed fiber loops. Attachment 9 lists the competing providers that provide service at these locations. The right-hand columns of Attachment 9 show the source of the information for this location and carrier: (i) the competing providers' discovery responses, and (ii) GeoResults' independent data. For example, location number 26 on Attachment 8 is the entry for one building in the downtown Chicago Franklin wire center: 10 South LaSalle Street, a short walk down the street from the Commission's Chicago offices. The detailed results for that location appear in row 30 of Attachment 9. On Attachment 9, the first group of columns to the right of the building information for 10 South LaSalle show that two different competing providers have stated in discovery that they have deployed a high-capacity loop at that location, and it gives their names. The next group of columns show that GeoResults identified the same two competing providers at that location.

In all, there are 122 locations that satisfy the self-provisioning trigger. Of these 122 locations, satisfaction of the trigger has already been confirmed by discovery responses to date for 94 locations.

Q38. How does SBC Illinois plan to address the locations that have not yet been confirmed by the applicable providers?

A38. For those competing providers that have not yet responded to SBC Illinois' discovery requests, SBC Illinois is working with the providers to obtain the necessary information. If these efforts prove unsuccessful, SBC Illinois may either make a motion to compel or enforce its subpoena. For those competing providers that have responded, but have not addressed a particular location where GeoResults' independent data shows they have deployed a high-capacity loop, SBC Illinois' investigation will continue.

Q39. How do you know that these facilities can provide service at the DS-3 level?

A39. First, the carriers that have responded to SBC Illinois' discovery requests thus far have generally confirmed that they provide DS-3 service at the locations indicated. Second, the competing carriers themselves advertise that they provide DS-3 capacity. XO, Allegiance, and AT&T all advertise that they are providing DS-3 high capacity loops. AT&T offers a "comprehensive portfolio of wholesale Voice, Data and IP Services," including OC-3 Local Channel circuits with an optional multiplexing option that "allows for channelization and an economical means to separate and transmit lower-capacity DS1, DS3. . . signals." See Attachment 11. Other competing carriers offering dark fiber include AboveNet, Looking Glass, and Level 3.

These results square with simple common sense. Once a CLEC has deployed fiber optic loop transmission facilities to a location and has lit the fiber with equipment, those fiber facilities are certainly capable of carrying traffic at the DS-3 capacity level and serving customers who require a DS-3 loop. As I explained above, the DS-3 level is one of the building blocks of high capacity digital communication. A basic fiber optic transmission system has a capacity of at least OC-3, which is enough to carry not just one but three DS-3s of traffic (equivalent to 2,016 voice-grade circuits). Almost by definition, then, a fiber optic facility that is sufficient to satisfy the trigger for dark fiber will also satisfy the trigger for DS-3 loops.

Q40. What is the basis for concluding that these providers also have dark fiber?

A40. Again, carriers like AboveNet advertise dark fiber offerings. See Attachment 7. Here too, the result is dictated by common sense. Fiber optic cables are typically installed in increments of 12, 24, 48 and higher. One DS-3 loop would take no more than 4 of those fibers. As the largest initial cost of deploying fiber is not the fiber itself, but the cost of placement, carriers naturally include spare “dark” facilities to allow for future growth and reduce the chance that additional fiber would have to be deployed later.

Q41. What conclusion have you reached?

A41. As shown in my Attachments 8 and 9, the self-provisioning trigger has been satisfied for at least 122 locations in the state. Thus, requesting carriers are not impaired without unbundled access to DS-3 and dark fiber loops at these locations. While other customer locations may satisfy the trigger, SBC Illinois has not yet received sufficient information

to show that they do. Additional information possessed by the CLECs and not yet provided in discovery would be required to make that determination.

2. Wholesale Trigger

Q42. Please describe in more detail the “wholesale trigger” for unbundled DS-1 and DS-3 loops.

A42. The “competitive wholesale facilities trigger” (i.e., “wholesale trigger”) is satisfied if the state commission finds that at least two unaffiliated wholesale providers (i) have deployed loop transmission facilities to that location, (ii) offer the designated loop capacity over those facilities on a wholesale basis, and (iii) have access to the entire customer location, including each individual unit within that location. For purposes of this trigger, the competing provider may use unbundled, leased, or purchased dark fiber facilities if it has attached its own optronics to activate the fiber.²⁴

Q43. Which locations satisfy the wholesale trigger?

A43. As shown in my Attachment 12, the wholesale trigger has been satisfied for at least 122 locations. While other locations may pass this test, I cannot determine conclusively that they do from the data available to SBC Illinois at this time. Information possessed by the CLECs would be required to make that determination.

Note that these locations also satisfy the self-provisioning trigger, as discussed in the previous section of my testimony and as shown on Attachment 8. Because the self-

²⁴ 47 C.F.R. § 51-319(a)(4)(ii) & (a)(5)(ii)(B).

provisioning trigger is already sufficient to show impairment for DS-3 loops at these locations, there is no need to apply the redundant wholesale trigger for DS-3. However, the self-provisioning trigger does not apply to DS-1 loops; only the wholesale trigger applies in that context. Accordingly, the remainder of this section applies the wholesale trigger only for purposes of demonstrating non-impairment with respect to DS-1 loops.

Q44. How did you determine that these locations satisfy the wholesale trigger?

A44. As with the self-provisioning trigger I described in the preceding section, I considered information obtained in discovery and from GeoResults to establish which locations have at least two high-capacity loops deployed by competing providers. The main difference is that under the wholesale trigger, the providers offer their loops to other carriers for their use, instead of or in addition to serving their own end users. Thus, I started with the same list of buildings with at least two competing providers that I prepared for the self-provisioning trigger (Attachment 9). I then determined whether at least two of the carriers at each location offer wholesale service, based on two independent sources. First, I reviewed publicly-available information from the carriers' websites to determine that they offer wholesale loops. Second, I reviewed the information received by SBC Illinois thus far in discovery, to verify whether (i) the competing provider has stated that it provides wholesale service or (ii) one of its carrier customers has stated that it receives wholesale service. The results of that analysis are summarized on Attachment 3.

Q45. How did you determine whether the competing provider "has access to the entire customer location, including each individual unit within that location"?

671 facilities a few hundred feet further to serve the enterprise customer location, at a
672 relatively low cost.²⁷ In fact, as shown on Attachment 20, 115 of these locations already
673 have fiber loops provided by one of several different competing providers. Further, over
674 80 additional locations in these six wire centers are served by *more* than one competing
675 provider, and are included in SBC Illinois' analysis of the triggers (see Attachment 8).

676 Second, because SBC Illinois' analysis is limited to locations within selected
677 competitive fiber corridors that are narrowly defined (roughly equivalent to a short city
678 block), the local economic, engineering, and topographical factors which the FCC
679 considers relevant are largely homogeneous for all locations within the corridors. For
680 example, if an enterprise building is within 300 feet of a competing carrier's existing
681 fiber facilities, it is highly unlikely that there would be a large hill or river in between the
682 two. The fact that multiple carriers have already deployed fiber loops to numerous
683 customer locations within the same 300-foot "corridors" provides further evidence that
684 there is no "impairment" for potential deployment to enterprise locations within those
685 corridors. Further, SBC Illinois excluded those locations with estimated
686 telecommunications spending under \$50,000 per year, as I describe further below.

687
688 **Q53. What data did you use to establish the location of existing fiber facilities and lit**
689 **buildings?**

690 **A53. As I discussed above, SBC Illinois obtained information from independent third-parties.**
691 **GeoResults, which I described earlier, provided information as to which locations already**

²⁷ In fact, some carriers use high-speed wireless connections to connect buildings to their fiber networks such

692 have fiber loop facilities, and information about carrier hubs or “hotels” to which
693 competing networks are often connected. Another independent party, GeoTel, provided
694 information regarding the location and layout of competing fiber networks. I also
695 reviewed competing carriers’ web sites, which include details such as route maps and
696 lists of cities and locations served. Finally, SBC Illinois obtained additional information
697 from competing carriers in discovery. Attachment 19 is the set of maps received thus far
698 in discovery. As with the maps SBC Illinois compiled from third-party data
699 (Attachments 13-18) the competitors’ own maps confirm that Chicago is a thriving
700 market for competitive fiber facilities.

701
702 **Q54. Who is GeoTel?**

703 **A54.** GeoTel, Inc. is an analysis firm specializing in serving the telecommunications industry.
704 It provides expert consulting services to assist service providers in penetrating new
705 markets and expanding existing markets, and to help fiber vendors sell or lease fiber to
706 those service providers. It gathers information about business opportunities, product
707 offerings, potential customers, and telecommunications markets throughout the country,
708 and then it provides that information to clients. Like GeoResults, GeoTel is a member of
709 a consortium of consulting companies called “MapInfo.”

710
711 **Q55. What services do they provide?**

as “fiberless” optical high speed connections.

A55. GeoTel offers a wealth of information on fiber facilities, including fiber transport routes, points of presence, interconnection facilities, collocation and data centers, and the location of wireless towers. As with GeoResults, GeoTel's customers include both competing and incumbent LECs, along with fiber wholesalers and large business users of communications facilities. Like GeoResults, GeoTel helps its customers assess their current markets and make decisions about new business opportunities. GeoTel helps them see how their network fits with those of other carriers.

Q56. What information did they provide to SBC Illinois for use in the analysis here?

A56. GeoTel provided SBC Illinois with a report showing the locations of fiber routes for the Metropolitan Statistical Area of Chicago, and the identities of the applicable providers.

Q57. How did GeoTel obtain that information?

A57. GeoTel has several sources that it uses to compile and verify information. First, GeoTel acquires information from fiber owners themselves: Some fiber owners provide the information to GeoTel so that GeoTel can help them locate buyers; others provide the information at GeoTel's request. Second, GeoTel has researchers go through large cities tracing fiber routes, by looking at fiber access manholes and using Global Positioning Systems to map the location of the fiber. Finally, GeoTel searches public records, such as construction permits and information from companies that lay trenches from fiber.

Q58. How did GeoTel verify their data?

734 **A58.** As I described in my previous answer, GeoTel uses multiple sources to gather data, and
735 each serves as a cross-check on the others. Further, approximately every six months,
736 GeoTel repeats its methodology to keep its information accurate and up-to-date.

737
738 **B. Selection of Specific Customer Locations**

739 **Q59.** Within the fiber corridors shown in Attachments 13-18, what customer locations did
740 you select for further analysis of potential deployment?

741 **A59.** The first step we took was to remove any residential locations that are within those
742 corridors and focus on business and government locations. SBC Illinois consulted a
743 database provided by Dun & Bradstreet (“D&B”), which maintains a wealth of
744 information about business and government entities and the geographic locations of their
745 offices, right down to the building address.

746
747 **Q60.** Please describe briefly Dun & Bradstreet and the services it provides.

748 **A60.** D&B is a world leader in obtaining, maintaining, and analyzing data about business and
749 government, for use in credit, marketing, and purchasing decisions worldwide. Its
750 databases include more than 64 million businesses worldwide (including 13 million in the
751 United States).

752
753 **Q61.** After obtaining the list of business and government addresses from D&B, did you
754 narrow further the scope of locations selected for analysis?

755 **A61.** Within the locations identified by D&B, we selected only those locations with an annual
756 telecommunications “spend” of \$50,000 or more, as identified by TNS Telecoms

757 (“TNS”). This resulted in an overall set of 749 customer locations selected for review.

758 These are listed on Attachment 20.

759
760 **Q62. Please describe TNS Telecoms.**

761 **A62.** TNS Telecoms “(TNS”) is the world’s largest provider of telecommunications market

762 information. It offers in-depth market intelligence on all aspects of the

763 telecommunications market and its clients include the major worldwide providers of

764 telecommunications services. It has a strategic alliance with Dun & Bradstreet, which I

765 discussed above.

766
767 **Q63. How does TNS determine the annual telecommunications “spend” of a building?**

768 **A63.** TNS conducts random samples of businesses across the nation to determine how much

769 they spend each year. Attachment 22 is a TNS publication that describes its database.

770 Using a model that it developed, TNS uses its samples to estimate the

771 telecommunications spending characteristics of businesses based on size, location,

772 industry, and other factors. TNS verifies its estimates by conducting 3,500 additional

773 surveys each quarter. Further detail concerning TDS’ methodology is set forth in

774 Attachment 23.

775
776 **Q64. How did SBC Illinois select the \$50,000 figure?**

777 **A64.** In FCC Docket 96-98, the FCC’s ongoing rulemaking to implement the 1996 Act, the

778 United States Telecommunications Association submitted a study from the Cambridge

779 Strategic Management Group (“Cambridge study”) that analyzed the costs and other

factors of extending an existing fiber network.²⁸ Attachment 24. The results of that study showed that an annual revenue threshold in the range of \$44,000 would, on average, be sufficient to recover the investment required to extend a CLEC SONET network 500 feet to an enterprise building. SBC Illinois' figure is above the \$44,000 average revenue threshold identified by the Cambridge study, and also above the results for all of the individual cities in that study (for example, the revenue threshold in Cleveland was approximately \$47,000).

Q65. Does the TNS estimate of telecommunications spending mean that a CLEC is guaranteed \$50,000 in revenue (or at least the \$44,000 revenue threshold established by the Cambridge study) simply by extending its fiber to the building?

A65. There are no guarantees, but there are a number of factors that make the \$50,000 figure reasonable. First, most of the locations we selected have an annual estimated spend that is well above \$50,000. In fact, the overall average spend for these 749 locations is over \$800,000. Further, once a carrier installs a fiber loop to serve one or more customers at a location, it can price aggressively to obtain more customers (and more revenue) in that location. Still, the revenue a carrier can gain is a complicated matter with many variables. But that is not the point of the \$50,000 figure here. For present purposes, it does not matter whether the carrier will actually earn \$50,000, or achieve the average revenue threshold of \$44,000. If the carrier does not think that a particular building location (or a particular customer opportunity within that location) will spend enough on

²⁸ This study, the "CLEC Network Extension Model", was attached to the Reply Comments of the United

telecommunications service to warrant a DS-3, it does not need a DS-3 in the first place and would not be impaired without unbundled access to a DS-3. The actual analysis of particular locations, and the local engineering and cost factors identified by the FCC, is documented in Mr. Sander's testimony. All SBC Illinois is doing is limiting the scope of that analysis to exclude small-revenue locations that are unlikely to demand a DS-3 in the first place, so that we can focus on larger "enterprise" locations. For that purpose, TNS provides a reasonable, objective estimate of revenue, and the Cambridge study provides a reasonable benchmark revenue threshold figure.

Q66. Please summarize the results of your analysis and that of Mr. Sander.

A66. Based on the "evidence of alternative loop deployment" set forth above, and based on the analysis of other engineering and cost considerations set forth in Mr. Sander's testimony (and supported by Mr. Wardin's testimony), requesting carriers are not impaired without access to unbundled DS-3 and dark fiber loops at the 749 customer locations set forth in Attachment 20.

IV. CONCLUSION

Q67. Please summarize the conclusions you have reached.

A67. As shown above, requesting carriers would not be impaired without unbundled DS-3 and dark fiber loops at the over 850 customer locations identified in Attachments 8 and 20 to

States Telecom Association ("USTA") filed in FCC CC Docket No. 96-98 on April 30, 2001.

821 my testimony, and they would not be impaired without unbundled access to DS-1 loops
822 at the 122 customer locations identified in Attachment 12 to my testimony.

823

824 **Q68. Does this conclude your testimony?**

825 **A68.** Yes.

1
2

ATTACHMENT 3
(Proposed stricken testimony is highlighted)

BEFORE THE ILLINOIS COMMERCE COMMISSION

Docket No. 03-0596

**Rebuttal Testimony of Rebecca L. Sparks
On Behalf of SBC Illinois
Regarding High-Capacity Loops**

SBC Illinois Exhibit 2.1

PUBLIC VERSION

February 4, 2004

301

302 **Q. How would Mr. Ball's proposal change if he properly applied the applied the FCC's**
303 **self-provisioning rule?**

304 A. Mr. Ball deleted 60 locations from the list of 122 locations identified by SBC Illinois,
305 based on his opinion that at least one CLEC does not have access to the entire building.
306 None of these 60 locations should be removed from SBC Illinois' self-provisioning trigger
307 list, because building access is not a requirement of the trigger.

308

309 **Q. What is the second issue raised by CLECs?**

310 A. Mr. Ball (p. 17) and Mr. Burt (pp. 31-32) next argue that SBC Illinois cannot rely on
311 information provided by Geo Results. As I explain in my direct testimony, GeoResults is a
312 database marketing and consulting firm that provides clients with accurate databases of
313 telecommunication related information, including a national database of Fiber "Lit"
314 buildings it developed based on Telcordia CLLI codes and CLONEs databases. SBC
315 Illinois used this GeoResults data to identify buildings at which CLECs have deployed
316 fiber terminating equipment to create DS1, DS3 and other circuits.

317

318 **Q. What is the CLEC concern with the GeoResults data?**

319 A. Mr. Ball (p. 17) argues that the information is not accurate because -- in the case of MCI --
320 it conflicts with MCI's own information. As a result, he argues that the GeoResults data
321 should not be used unless validated by the CLEC itself.

322

323 **Q. How do you respond?**

324 A. GeoResults data is good data. It is based on CLLI code information that identifies fiber
325 terminating equipment that the CLECs themselves assign to this equipment using industry-
326 standard CLLI codes. I acknowledge that the GeoResults information is proof of *fiber*
327 *terminating equipment* rather than proof of *fiber loop facilities* that connect the terminating
328 equipment to the CLEC network. As I explain at lines 412 - 431 of my direct testimony,
329 however, the presence of working equipment of this type at a building demonstrates that
330 there is also a fiber loop at that location because there is no other use for that equipment. I
331 also explain that, contrary to Mr. Ball's assertion at p. 17, SBC Illinois cannot be the fiber
332 loop provider at these locations because SBC Illinois provides its own fiber terminating
333 equipment and does not terminate fiber loops into the fiber terminating equipment of
334 CLECs. Furthermore, no CLEC purchases unbundled dark fiber from SBC Illinois in the
335 Chicago area.

336
337 **Q. What does Staff say about the GeoResults information?**

338 A. Dr. Liu states that this information should not be the sole basis upon which the
339 Commission concludes that a CLEC has deployed loop facilities to a building. (lines 435-
340 441; 623-629.) I agree with this, but only up to a point. The GeoResults information is
341 certainly sufficient to establish a rebuttable presumption that a CLEC has deployed fiber
342 loop facilities to a location. If the CLEC with the alleged loop facility does not dispute the
343 information put forward by SBC Illinois in this manner, the Commission should conclude
344 that the GeoResults information is accurate at that location. If the CLEC disputes the
345 GeoResults information, then I agree that SBC Illinois would have to produce additional

information to establish the existence of the loop, such as a CLEC record obtained in discovery or a visual observation of the loop by SBC Illinois personnel.

Q. Given your position, how should the Commission handle MCI's claim that it has no loops at six buildings where GeoResults' data indicates that MCI has loops? (Ball, p. 17.)

A. Actually, there are seven such buildings and SBC Illinois has deleted those locations from its list of buildings that meet the self-provisioning criteria.

Q. Which CLECs have affirmatively informed the Commission in their testimony that they do not self-provision certain loops?

A. In addition to the information MCI provides in Mr. Ball's testimony, Allegiance and Sprint state that they do not self-provision any loops. (Allegiance Ex. 1.0, pp 10-11; Sprint Ex. 2.0, p.18.) In each case, I have accepted these fact-based affirmative representations and have deleted those references from Attachment RLS-3 (revised JGS 9.) I note, however, that the deletion of the Sprint locations only remove three locations from the self-provisioning trigger list. There never were any Allegiance locations on Attachment JGS 9, so nothing had to be removed.

Q. How do you respond to the third CLEC issue, i.e., Mr. Burt's claim that if a CLEC has deployed a dark fiber loop, the Commission cannot assume that there are unused dark fiber strands all along the length of the loop? (p. 15.)